HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

Writ Petition No. 18840 of 2006

Between::

Avula Manikyamma and others.

..Petitioners

And

The Government of India, represented by Deputy Secretary, Ministry of Home Affairs, Freedom Fighters Division, Lokhnayak Bhavan, New Delhi and another.

..Respondents.

:ORDER:

Counsel for the petitioners : Shri Palivela Satyaraja Babu

for Shri Ch. Venkataraman

Counsel for respondents : Shri A. Rajashekar Reddy

(Assistant Solicitor General)

September 19, 2006:

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In this petition, the petitioners have prayed for issue of a mandamus to the respondents to consider their claim for grant of pension under Swatantra Sainik Samman Pension Scheme, 1980 (for short 'the 1980 Scheme').

The petitioners claim for grant of pension under the 1980 Scheme is founded on the assertion contained in paragraph No.2 of the affidavit of petitioner No.9, Nalamala Satyanarayana, son of Veerabhadraiah that they had participated in the freedom struggle and fought against the Nizam's Rule during 1947-48. However, for the reasons known to them, the petitioners have not placed on record copies of the applications submitted by them for grant of pension under the 1980 Scheme or documents to substantiate their claim to be treated as freedom fighters under the 1980 Scheme.

Clause (4) of the 1980 Scheme, which has bearing on the petitioners' claim, reads as under:

4. Who is Eligible?

For the purpose of grant of samman pension under the Scheme, a freedom fighter is:-

(a) A person who had suffered a minimum imprisonment of six months in the mainland jails before Independence on a/c. However, ex-INA personal will be eligible for pension if the imprisonment/detention suffered by them was outside India.

(b) The minimum period of actual imprisonment for eligibility of pension has been reduced to three months, in case of women and SC/ST freedom fighters from 1.8.1980.

EXPLANATION

1. Detention under the orders of the competent authority will be considered as imprisonment.
2. Period of normal remission up to one month will be treated as part of actual imprisonment.
3. In the case of a trial ending in conviction, under trial period will be counted towards actual imprisonment suffered.
4. Broken period of imprisonment will be totaled up for computing the qualifying period.

(b) A person who remained underground for more than six months provided he was:

1. A proclaimed offender; or
2. One on whom an award for arrest/head was announced; or
3. One for whose detention order was issued but not served.

(c) A person interned in his home or externed

from his district provided the period of internment/externment was six months or more.

(d) A person whose property was confiscated or attached and sold due to participation in the freedom fighter struggle.

(e) A person who became permanently incapacitated during firing or lathi charge.

(f) A person who lost his job (Central or State Government) and thus means of livelihood for participation in national movement.

A Martyr is person died or who was killed in action or in detention or was awarded capital punishment while participation in a National Movement for emancipation of India. It will include and ex-INA or ex-Military person who died fighting the British".

Since the petitioners have failed to produce any tangible evidence to substantiate their claim to be treated as freedom fighters within the meaning of the 1980 Scheme, it is not possible to entertain their prayer for issue of a mandamus to the respondents to sanction pension in their favour.

With the above observations, the writ petition is dismissed.

As a sequel to dismissal of the main petition, W.P.M.P.No. 23693 of 2006 filed by the petitioners is also dismissed.

After the aforementioned order was dictated, learned

counsel for the petitioners made a request that his clients may be permitted to withdraw the writ petition with liberty to file fresh one with relevant documents.

The request of the learned counsel, though unusual, is accepted and the writ petition is dismissed as withdrawn with liberty in terms of the prayer made.

G.S. SINGHVI, CJ

19-09-2006
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